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JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 21

In the Matter of the Estate of
PAULINE SCHRADER, Deceased

OSWALD ZSCHERNIG, MINNA PABEL, OLGA HERTA WINCKLER,
ALFRED KOESTER, JOHANNA BLASCHKE and HANS FUESSEL,
Appellants,

v.

WILLIAM J. MILLER, Administrator of the Estate of Pauline Schrader,
Deceased, MARK O. HATFIELD, TOM McCALL and ROBERT W.
STRAUB, respectively the Governor, Secretary of State and State
Treasurer of Oregon, constituting the STATE LAND BOARD OF
OREGON, and all persons unnamed or unknown having or claiming
any interest in the Estate of Pauline Schrader, Deceased,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE
STATE OF OREGON

PETITION FOR CLARIFICATION OR REHEARING
BY APPELLEE STATE LAND BOARD
OF OREGON

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PETITION FOR CLARIFICATION OR REHEARING BY APPELLEE STATE LAND BOARD OF OREGON

The State Land Board of Oregon, the petitioner-appellee herein, respectfully petitions and prays that this Court grant clarification or rehearing of its decision and opinion of January 15, 1968 reversing the Oregon Supreme Court in the above-entitled case.

REASON FOR GRANTING CLARIFICATION OR REHEARING

The opinion of the Court read in light of the facts of the case and the concurring opinion of Mr. Justice

Stewart leaves the State of Oregon uncertain as to whether Oregon Revised Statutes Section 111.070 is to be taken as unconstitutional in its entirety; or whether only those portions of the Statute, (1)(b), relating to receipt of funds in the United States and subsection (1)(c) relating to receipt by foreign heirs of funds without confiscation, are found unconstitutional; or whether the statute is only an unconstitutional intrusion into the field of foreign affairs by virtue of its application in the examination of foreign laws and other evidence. For the benefit and guidance of the State of Oregon under the decision of this case the State of Oregon acting through the State Land Board requests clarification of the decision.

As the Court recognized and as was stated in the concurring opinion of Mr. Justice Stewart, in this case there was no evidence presented nor any examination of foreign law and therefore there was no application of the statute except for the entry of default arising from the failure of the heirs to bear their burden of proof and show a reciprocal right of inheritance.

The opinion of the Court does not overrule *Clark v. Allen*, 331 U.S. 503, nor re-examine that ruling and therefore *Clark v. Allen* with its permission for a general reciprocity statute as there examined remains the law.

The opinion in the present case refers to the application of the statute by the state as follows. On page 3, " * * * the history and operation of this Oregon statute make clear that § 111.070 is an intrusion by the State into the field of foreign affairs * * * ." On page 7,

"* * * Yet such forbidden state activity has infected each of the three provisions of § 111.070, as applied by Oregon." On page 11, "* * * The statute as construed seems to make unavoidable judicial criticism of nations *-*-*." Nowhere does the Court state the statute is unconstitutional as Mr. Justice Stewart indicates his position to be in his concurring opinion.

However, the opinion does substantially criticize § 111.070, subsection (1)(b) on page 8 and subsection (1)(c) on page 7. This taken together with the continued existence of *Clark v. Allen* with its consideration of a general reciprocity statute and the recognition that state courts must still "read, construe, and apply laws of foreign nations" leads to the interpretation that a general reciprocity statute would be valid when applied objectively. This indicates § 111.070 is severable; that after severing subsections (1)(b), (1)(c), and (2) as invalid, the remaining section (1), subsection (1)(a) and section (3) constitute a valid general reciprocity statute as in *Clark v. Allen*.

CONCLUSION

Because of the uncertainty as to which of the possible interpretations the Court intend~~s~~ as indicated above the State Land Board of the State of Oregon respectfully urges that the Court clarify the interpretation intended by its decision.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for clarification or rehearing is presented in good faith and not for delay.

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